IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 853 OF 2007

1. Union of India, through)
Secretary, Ministry of Finance, Department of)
Revenue, North Block, New Delhi - 110 001)

2. Chairman,)
Central Board of Excise and Customs,)
North Block, New Delhi – 110 011)

3. Commissioner of Customs (Gen.))
New Custom House, Ballard Estate,)
Mumbai-400 001)..Petitioners

versus

Deepak Y. Gotefode,)
R/o Gopal Apartment, 3-B, Room No.7, 1st floor,)
Vijay Nagar, Kalyan (East) – 421 306)
residing at Sant Tukodoji Ward, Behind New LIC)
Building, Bhandara-441 904, Maharashtra)..Respondent

Mr. R.R. Shetty with Mr. N. Prajapati for the petitioners.
Mr. G.L. Masand with Mr. S.R. Sawant for the respondent.

CORAM: **SWATANTER KUMAR, C.J.** &
SMT. RANJANA DESAI, J.

Judgment reserved on : July 17, 2007
Judgment delivered on: August 21, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):

The respondent was appointed as a Lower Division Clerk on 6th June, 1995. His name was recommended by the Staff Selection Commission. He was appointed against a post reserved for Scheduled Tribe. In clause 20 of the letter of appointment issued to the respondent, it was specifically stated that the appointment was provisional and was subject to the caste/tribe certificate verification through proper channels and if it was found to be false, the services would be liable to be terminated without assigning any reason. Along with his application, the respondent had submitted a certificate dated 23rd August, 1988, issued by the Executive Magistrate, Bhandara, claiming that he belongs to Halba, Scheduled Tribe. The respondent was confirmed in service on 8th September, 1998. The department, vide its letter dated 9th August, 1995, forwarded the caste certificate to the Executive Magistrate, Bhandara, for verification. The Executive Magistrate vide his reply dated 5th September, 1995, advised the petitioners to forward the original certificate to the Scheduled Tribe Caste Certificate Scrutiny Committee, Nagpur. On 17th October, 1995, the certificate was forwarded to the said Committee. The Committee conducted its investigations and, vide their letter dated 27th July, 2000,

called for some more documents for verification, which were sent. Vide their letter dated 10th January, 2001, the respondent was directed to appear before the Scrutiny Committee with all original documents. The department, vide their letter dated 4th August, 2001, had asked the respondent to produce the original documents. Despite such notice, the respondent did not submit the original certificate and produced a certificate dated 20th September, 2001, issued by the Executive Magistrate, Bhandara. Vide letter dated 22nd October, 2001, again the respondent was informed that certificate dated 20th September, 2001, was not acceptable and he was directed to again appear before the Scrutiny Committee with original documents. Because of the uncooperative attitude of the respondent and the fact that the original certificate was not produced, the Scrutiny Committee, vide its order dated 17th July, 2004, confiscated the caste certificate dated 23rd August, 1988, which was produced by the respondent at the time of his appointment. In furtherance to the recommendation of the Scrutiny Committee and confiscation of the caste certificate, vide order dated 25th August, 2004, the services of the respondent were terminated with immediate effect in terms of clause 20 of the appointment letter. Aggrieved from this order, the respondent filed an application, being Original Application No. 612/2004, before the Central Administrative

Tribunal which was allowed by the Tribunal vide its order dated 20th April, 2006. While setting aside the order of termination, the Tribunal directed reinstatement of the respondent, however, without back wages.

2. Aggrieved by the order of the Tribunal, the Union of India has challenged the correctness of the said order in this petition under Article 226 of the Constitution of India.

3. The facts in the present case are hardly in controversy. The Tribunal relying upon the judgment of the Supreme Court in the case of *State of Maharashtra* vs. *Milind Katware and others*, AIR 2001 SC 393, held that the respondent was entitled to the relief prayed for. It will be useful to notice at the very outset that, as noticed even by the Tribunal, the Supreme Court in Milind's case had framed two questions and while answering them, it was categorically held that the Scheduled Tribe Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it. It was further held that it was not open to the State Government or the Courts or Tribunals or

any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under clause (1) of Article 342 of the Constitution of India. In the present case, first we have to examine what the respondent had done. The respondent had made an application claiming himself to be belonging to Halba, Scheduled Tribe and it was on the basis of that certificate that he was given employment by the petitioners. Clause 20 of the letter of appointment was binding upon the parties and it was obligatory upon the respondent to produce the original certificate, a copy of which he had annexed to the application. The certificate which the respondent subsequently produced was not a certificate of Halba, Scheduled Tribe. In terms of the letter of appointment, the appointment was to take effect from 26th June, 1995 and prior to that date, the respondent should fall in the category against which he applied. Vide letter dated 4th August, 2001, the respondent was directed to produce the original caste certificate and even to produce the supporting documents and appear before the committee. The verification was in relation to the caste certificate issued on 23rd August, 1988. Again vide letter dated 22nd October, 2001,the respondent was called upon to produce the original certificate within seven days of the receipt of the letter but the respondent failed to do so. The Scrutiny Committee in its report noticed in great detail the

conduct of the respondent as well as failure on his part to produce the relevant documents. The following extract from the order of the Scrutiny Committee can be usefully referred to.

> "The Scrutiny Committee vide notice 7-5-2003 called the candidate for hearing on 26.5.2003, but the candidate vide application dated 20.5.2003 requested for next date. Again the Scrutiny Committee vide notice dated 21.7.2003 had given the candidate another opportunity of hearing on 4.8.200. However, the date of hearing was postponed to 27..8.2003, which was informed to the candidate vide notice dated 28.7.2003, but again the candidate vide application dated 8.8.2003 requested for next date. Hence, he was called for hearing on 17.11.2003. Accordingly, the candidate along with his father appeared before the Scrutiny Committee and submitted the information in the questionnaire proforma provided by the Scrutiny Committee. During the hearing the candidate and his father failed to prove that their socio-cultural traits, characteristics, customs match with those of Halba, Scheduled Tribe.
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> 7. During the hearing, a copy of Police Vigilance Cell report was served on the candidate and he was given an opportunity to submit his say within 17 days. The candidate submitted his say dated 19.11.2003, stating that he agrees with the contents of the Police Vigilance report. Thus, Koshti is a separate caste and it is not included in the list of Scheduled Tribe. Moreover, the weaving as an occupation is a taboo in Halba/Halbi, Scheduled Tribe community. The scrutiny Committee on the basis of facts came up during the Police Vigilance Cell enquiry, social characteristics, traits, ethnic linkage and affinity test reaches the conclusion that the candidate does not belong to Halba, Scheduled Trib".
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> 8. The Scrutiny Committee vide notice dated 27.11.2003 called the candidate for hearing on

15.12.2003, but the candidates application dated 5.12.2003 informed that he is unable to appear for hearing and requested to decide his claim.

The Scrutiny Committee evaluated the documents furnished by the candidate in the light of socio-cultural traits, ethnic linkage, affinity test and police vigilance report, as per the norms and guidelines prescribed in Madhuri Patil's judgment and Vandana Sonkusare's judgment (AIR 1995 SC 94, 1998 (2) MhLJ 12). The findings of the Scrutiny Committee are as follows:-

(I) The document quoted at Sr. No.1 is a Caste Certificate of the candidate, which being the subject matter of verification bears less evidential value. Therefore, the caste certificate furnished by the candidate in support of his tribe claim cannot be relied upon.

(II) The document quoted at Sr. No.2 is a xerox copy of certificate of verification of candidate issued by the Executive Magistrate, Bhandara certifying that the caste claim of the candidate as belonging to Halba, Scheduled Tribe is valid as per office record. It is to be mentioned here that the Executive Magistrate had not enquired into detailed and also has not verified the basic documentary evidence. However, the caste of the candidate's father is clearly recorded as Koshti in Primary School admission register extract, obtained by the Police Vigilance Cell. Therefore, this document is rejected.

(III) The documents quoted at Sr. No.3 and 4 are the Primary School Leaving Certificates of candidate, which show the caste entry as Halba. But, the caste of the candidate's father is recorded as “Koshti” in school admission register extract, obtained by the Police Vigilance Cell. The caste of a person is determined on the basis of the caste of his father/grandfather and blood relations, because the caste is acquired by birth. Hence, these documents are rejected.

(IV) The document quoted at Sr. No.5 is of no help

in deciding the caste claim of the candidate, because the caste is not mentioned on it. Hence, this document is rejected.

After evaluating and verifying the case, in the light of information collected by the Police Vigilance Cell and observations made by the Research Officer, the Committee has come to the conclusion that the candidate does not belong to Halba, Scheduled Tribe community. Hence, the Scrutiny Committee passes the following order:-

ORDER

After considering all the documents, facts and in exercise of the power vested vide Maharashtra Act quoted in the preamble at Sr. No.1, the Caste Scrutiny Committee has come to the conclusion that Shri Dipak Yadawrao Gotephode does not belong to Halba, Scheduled Tribe & hence his claim towards the same is held invalid. His Caste Certificate granted by the Executive Magistrate, Bhandara vide R.C. No. 285/MRC-81/88-89, dated 23.8.88 is hereby cancelled and confiscated. "

A bare reading of the above shows that the respondent was not belonging to Halba, Scheduled Tribe but was a "Koshti". Nothing was placed on record before the Committee to show that Koshti was a Scheduled Tribe in terms of the notification issued. More than fair opportunity was granted to the respondent to produce the relevant documents which he failed to do. The respondent can hardly take any benefit of the resolution of the Government as the cut off date provided in the resolution is 15th June, 1995. The persons who would be

protected in terms of the Special Backward Category would be the persons who have obtained the certificate without misrepresentation and on correct basis. The concept of creamy layer would not to apply to the Special Backward Category and even if there was a change in the category, still they were to be protected. None of these ingredients are satisfied in the case of the present respondent.

4. The Court cannot substitute the notification as the same has to be strictly construed as the competent authority in its wisdom chooses to restrict the benefit to the clauses specified in the notification. It is not permissible for the High Court to go into the question whether castes are equatable and what caste the applicant belongs to. In the case of Milind (supra), the Supreme Court categorically stated thus:

> “The jurisdiction of the High Court would be much more restricted while dealing with the question whether a particular caste or tribe would come within the purview of the notified Presidential Order, considering the language of Articles 341 and 342 of the Constitution these being the parameters and in the case in hand, the Committee conducting the inquiry as well as the Appellate Authority, having examined all relevant materials and having recorded a finding that respondent belong to “Koshti” caste and has no identity with the 'Halba' 'Halbi' which is a Scheduled Tribe under Entry 19 of the Presidential Order, relating to State of Maharashtra, the High Court exceeded

> its supervisory jurisdiction by making a roving and indepth examination of the materials afresh and in coming to the conclusion that 'Koshtis' could be treated as 'Halbas'."

On the showing of the documents used by the respondent, he belongs to Koshti and there is no notification on record which includes Koshti as a Scheduled Tribe in the State of Maharashtra. The Government circular was issued on 15th June, 1995, which can hardly be of any help to the respondent. The Government notification would be effective prospectively and the respondent can hardly derive any benefit therefrom. Even otherwise, the respondent had made misrepresentation at the time of seeking employment and thus he cannot take any advantage of such a fact. It was argued on behalf of the respondent that the respondent had served for a considerable time, confirmed on 8th September, 1998, and his services were terminated on 25th August, 2004. The petitioner can hardly take any advantage of this argument as the investigation in terms of clause 20 of the letter of appointment had started in the year 1995 itself and it took considerable time to complete the investigation. The respondent was put to notice and, in fact, he delayed the proceedings before the Scrutiny Committee as well as in the submission of documents. The delay in any case will not be of much consequence as the Supreme Court in the case of *Bank*

of India vs. *Avinash D. Mandivikar and others* [2005 (7) SCC 690] has stated that mere delay in making a reference does not invalidate the order of the Scrutiny Committee. In the case of *R. Vishwanatha Pillai* vs. *State of Kerala and others,* 2004 (2) SCC 105, the Court further held as under.

> " 15. This apart, the appellant obtained the appointment in the service on the basis that he belonged to a Scheduled Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. His appointment was no appointment in the eyes of the law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under Article 322 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India. Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of a false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Castes. In view of the finding recorded by the Scrutiny Committee and upheld up to this Court, he has disqualified himself to hold the post. The appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India. As the appellant had obtained the appointment by playing a fraud, he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with

in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practising fraud or deceit, such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all".

"19. It was then contended by Shri Ranjit Kumar, learned Senior Counsel for the appellant that since the appellant has rendered about 27 years of service, the order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensionary benefits of the appellant. We do not find any substance in this submission as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled Caste candidate of appointment to that post, does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud.'

The protection would be available to the respondent only if he belonged to the class which at the relevant time was part of the notification. Similar view was taken by another Bench of this Court in Writ Petition (Lodging) No. 1110 of 2007 in the case of *Parinda Milind Keer* vs. *Indian Oil Corporation Ltd.*, decided on 21st July, 2007, where the Court held as under.

> " ....The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily have the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of a social status certificates, their

scrutiny and their approval, which may be the following ....."

In this connection a reference can also be made to a recent judgment of the Division Bench of this court in the case of Priti Girijashankar Varma vs State of Maharashtra and ors, Writ Petition Lodging No. 634 of 2007 decided on 21st June 2007.

7. In the present case, the petitioner had sought employment and admission in school on the basis of falsehood. By this falsehood she took advantage for years together. But for this falsehood neither the petitioner would have got education at that time nor employment in 1990s. If upon detection of such falsehood the respondents have taken action, interference with such action would tantamount to putting a premium of the fraudulent act or the falsehoodness.

8. The petitioner has approached this court under Articles 226 and 227 of the Constitution which itself is equitable jurisdiction. One who claims equity must do equity. The petitioner invoking the extra ordinary jurisdiction of the court under Article 226 of the Constitution should approach the court with clean hands. We have already noticed that even in this petition, the petitioner has not filed any Scheduled Tribe certificate. The letter issued by the Tahasildar dated 8th January 2007 is under clout and no plausible or reasonable explanation has been given why did the petitioner furnish Scheduled Tribe certificate when she was belonging to special backward class. The petitioner on the one hand sought employment on the basis of incorrect or manipulated certificate and enjoyed the benefits of employment for a considerable period, while on the other hand she deprived a Scheduled Tribe candidate, who on his/her own merit would have been appointed against a reserve vacancy. Today and even in recent past, getting employment is not easy. Every field is very competitive. Even candidates belonging to reserve category have stiff competition inter-se in class itself. The court cannot thus condone such unfair act and the action of the respondent- Corporation cannot be faulted, particularly when they have acted with

> utmost expeditiousness, once they detected that the certificate furnished by the petitioner was bogus."

5. In view of the above reasoning, we are of the considered view that the respondent obtained appointment by annexing an incorrect certificate and his subsequent conduct disentitles him from claiming any equitable relief. The respondent has deprived a genuine person belonging to Halba, Scheduled Tribe, from getting appointment and thus cannot be protected to take advantage of his own wrong. There is no reason for the Court to disturb the finding of facts arrived at by the Scrutiny Committee and no reason whatsoever has been given in the impugned judgment for not accepting the view of the Committee. The Court or the Tribunal would not embark upon the jurisdiction which is vested in the Scrutiny Committee. The view taken by the Committee calls for no interference. Resultantly, this writ petition is allowed. The impugned judgment of the Tribunal dated 20th April, 2006 is set aside. The petitioners are at liberty to take action against the respondent in accordance with law.

CHIEF JUSTICE

SMT. RANJANA DESAI, J.